

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 170)

UNION PACIFIC RAILROAD COMPANY – ABANDONMENT –
IN POLK COUNTY, IA

MOTION FOR PROTECTIVE ORDER

Decided: February 20, 2002

By motion filed on February 8, 2002, concurrently with its filing of an appeal of the Board's decision rejecting its offer of financial assistance, Mid-America Railroad, L.L.C. (MAR), seeks a protective order to safeguard the confidentiality of certain information contained in Exhibit B of the appeal, namely the financial statements of Mid-America Group, LTD. and its subsidiaries. In support of its motion, MAR asserts that the subject data are commercially sensitive and that their disclosure to the public could be damaging.

On February 12, 2002, Union Pacific Railroad Company (UP) filed a reply to MAR's motion for a protective order requesting that paragraph 3 of MAR's proposed protective order be changed to allow disclosure of confidential information to officers, counsel and consultants that have signed the applicable Undertaking. UP asserts that disclosing the information to officers and consultants will allow for a confidential review of the financial statements by people skilled in reviewing such documents.

UP's requested modification of the protective order is reasonable and will be adopted. MAR's motion for a protective order otherwise conforms with the requirements of the Board's rule at 49 CFR 1104.14 governing requests for protective orders. Accordingly, the protective order proposed by MAR, as modified by UP's proposal, will be adopted. See Appendix.

On February 12, 2002, UP also filed a Petition for Extension of Time for filing its reply to the appeal. UP requests an extension to permit it to file its reply five business days after physical receipt of Exhibit B by UP's authorized representative. UP asserts that the extension will allow it a reasonable opportunity to review the financial information contained in Exhibit B before it responds to the appeal. The extension will be granted because UP has shown good cause and no party will be prejudiced by the delay.

It is ordered:

1. The motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix are adopted. Exhibit B will be kept under seal and not placed in the public docket or otherwise disclosed to the public.

2. UP's petition for extension of time to file its reply is granted.

3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

Protective Order

1. For the purpose of this Protective Order, “confidential information” means information contained in Exhibit B of Mid-America Railroad’s appeal of the initial decision by the Director of the Office of Proceedings rejecting Mid-America Railroad’s offer of financial assistance in STB Docket No. AB-33 (Sub-No. 170).

2. The confidential information shall be used for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or competitive purpose.

3. The confidential information shall not be disclosed in any way except to officers of Union Pacific Railroad Company and its counsel and consultants that have signed the attached Undertaking, and the information may be used solely in connection with this and any related Board proceedings, or any judicial review proceedings arising therefrom.

4. Any documents containing the confidential information must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes later.

5. If the Board retains the confidential information, it shall, in order to keep it confidential, treat the information in accordance with the procedures set forth at 49 CFR 1104.14.

6. If Union Pacific Railroad Company intends to use the confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, it shall submit any documents setting forth or revealing such confidential information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such confidential information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such confidential information in accordance with this Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

Undertaking

I, _____, have read the Protective Order governing the filing of confidential information by Mid-America Railroad, L.L.C., in STB Docket No AB-33 (Sub-No. 170) and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-33 (Sub-No. 170) or any judicial review proceeding taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that Mid-America Railroad, L.L.C., shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

Name
Position/Affiliation